

UNAPPROVED MINUTES
CITY OF MILPITAS

Minutes: Regular Meeting of Milpitas City Council (Including Joint Meeting
with Redevelopment Agency)
Date of Meeting: April 1, 2003
Time of Meeting: 6:30 p.m. (Closed Session)
7:30 p.m. (Regular Session)
Place of Meeting: City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:34 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood, and Polanski.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following items listed on the agenda.

1. CONFERENCE WITH REAL PROPERTY NEGOTIATOR
(Pursuant to Government Code Section 54956.8)
Property: APN Nos. 86-05-021, 86-05-009, and 86-11-013
Negotiating Party: Thomas J. Wilson
Under Negotiation: Terms and Conditions for Acquisition/Lease of Property
2. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
(Pursuant to Government Code Section 54956.9[c])
Initiation of Litigation: One Case

Mayor Esteves adjourned the meeting to closed session at 6:35 p.m.

The City Council meeting reconvened at 7:33 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Livengood, Polanski, and Gomez present.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no closed session announcements.

PLEDGE

Mayor Esteves led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of March 18, 2003, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Dixon, Livengood.

Ayes: 5

SCHEDULE

Councilmember Livengood inquired if it had been determined what date would be used for the Library Subcommittee meeting as there had been some discussion about moving it. Mayor Esteves said there had been a discussion about changing the date. Councilmember Livengood said it could stay on the 15th for now and an adjustment could be made at a later date if deemed necessary. Mayor Esteves noted there was a possibility that the date would be moved.

Vice Mayor Dixon said she had a scheduled VTA meeting Wednesday afternoon, April 2, 2003, and the regular VTA Board meeting on Thursday, April 3, 2003.

MOTION to approve the Schedule of Meetings as amended.

M/S: Livengood, Gomez.

Ayes: 5

PRESENTATIONS

Mayor Esteves presented a Certificate of Appointment to Rene Briones in recognition of his recent appointment as Alternate No. 2 to the Bicycle Transportation Advisory Committee.

Mayor Esteves presented a Certificate of Re-appointment to Gunawan Alisantosa in recognition of his recent re-appointment to the Telecommunications Commission.

Mayor Esteves read a proclamation declaring April as "Month of the Young Child" and presented it to Kathleen Yurchak, Christine Rodriguez-Vigil, and Toby Librande.

Ms. Rodriguez-Vigil spoke about Children's Memorial Day and child abuse, addressed the need to heighten the awareness for children's well being; and questioned if we were in tune with the children around us. Ms. Rodriguez-Vigil introduced the Milpitas Christian School singers, stating they were third through fifth graders who had volunteered to sing this evening.

Jerry Lovejoy, the Choral Music Director, expressed his appreciation to the children who had given up their time to practice over the past few weeks; stated music was a very important aspect of the school; and explained the songs and motions the children would be performing.

Ms. Rodriguez-Vigil stated the significance of the flag was that a child was missing, representing the fact that there are children who fall victim to child abuse and some die across the nation; Milpitas was one of only eight cities in California flying the flag at the present time; and shared her hope that some day the flag would be seen flying in the schools and other organizations showing support for child abuse preventiveness.

RECESS

Mayor Esteves thanked the singers for their performance and requested everyone take a ten-minute break for refreshments. Mayor Esteves recessed the Council meeting at 8:04 p.m. The City Council meeting reconvened at 8:13 p.m. with all members present.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Art Swanson, Milpitas, said the choir's singing reminded him of the "Sound of Music". Mr. Swanson asked that the Council re-agendize and consider the length of the public forum as two minutes was too short.

Rob Means, Milpitas, suggested building a people mover, at a cost less than \$30 million, along Main Street to resolve some of the traffic issues and encourage more development along Main Street and the MidTown area; also suggested encumbering the project on the north end of Main Street for 2% of the construction costs (approximately \$600,000), which would be collected when the project was built. Mr. Means said he was told by some Planning Commissioners and staff that encumbering a project in this manner would require the people mover to be specified in the General Plan.

ANNOUNCEMENTS

Councilmember Polanski thanked Mayor Esteves, Vice Mayor Dixon, and Councilmember Gomez for joining members of staff at the welcoming ceremony for the new Milpitas Unified School District Superintendent, Karl Black; she attended the Senior Center 25th Anniversary celebration on March 25th; informed the Council that the 50th Anniversary committee had its second meeting the previous night and hoped to bring something to the Council in early May; and stated she had attended the Business Recycling reception on March 21 with Mayor Esteves. Councilmember Polanski announced that her parents were celebrating their 58th wedding anniversary and wished them well.

Vice Mayor Dixon stated she had been made an honorary member of Milpitas' local chapter of AARP, and thanked Ed Connor for inviting her; the Milpitas Little League had officially held its opening days; the Little League North celebrated its 40th anniversary; Milpitas hosted its first Silicon Valley Rapid Transit Corridor committee meeting in the Council Chambers and Milpitas now had a permanent seat on the Board; and along with Mayor Esteves and Councilmember Polanski, she had the privilege and honor to represent the City of Milpitas,

along with Chief Lawson, in honoring Detective Cindy Spaulding, who received an award from the Silicon Valley Crime Stoppers program and thanked its President, John Armando.

Mayor Esteves thanked the Moslem community for sponsoring a recent blood drive, the Rejustion Association of North America for sponsoring a Youth Star Night fundraiser to raise funds to promote "Say No to Drugs"; welcomed the over 500 delegates to the Northern California Hospital and Institution Counsel of AA to the Community Center; and commended Erva Wilson on the celebration of her 100th birthday.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Dixon, Livengood.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. Councilmember Polanski asked that item 6 be removed for discussion.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of item 6, in accordance with the staff recommendations.

M/S: Livengood, Dixon..

Ayes: 5

***7. Arts Support Program Forms**

Approved the Cultural Arts Support Program Commissioner Evaluation Form augmentation and the new Staff Evaluation Form.

***8. 911 Dispatch Center Reimbursement**

Accepted the reimbursement from the California 911 Emergency Communications Office in the amount of \$18,167.39 and approved the budget change form that will increase total appropriations in CIP No. 3389 for FY 02/03 by the same amount.

***10. Adopt Ordinance No. 259 News Racks**

Waived full reading of the ordinance; adopted Ordinance No. 259 adding Chapter 11 to Title X of the Milpitas Municipal Code entitled "Regulation of News Racks."

***11. Ranch Drive Traffic Signal**

Adopted Resolution No. 7292 granting final acceptance.

***13. Check Consultants, Inc. (Project No. 4182)**

Authorized the City Manager to enter into the agreement amendment with CHEC Consultants, Inc., in the amount of not-to-exceed \$16,330, subject to approval as to form by the City Attorney.

***14. CCS Planning and Engineering (Project No. 4208)**

Approved plans and specifications, and authorized advertising for construction bid proposals.

***15. Public Safety Radio Equipment (Project No. 8125)**

Awarded the bid for the purchase of the T1 multiplexer radio equipment to the lowest bidder, Tredent Data Systems, in the amount of \$25,768.65.

***16. Off-Leash Dog Park (Project No. 5072)**

1. Awarded contract to Lone Star Landscape, Inc. in the amount of \$220,204.00, subject to approval as to form by the City Attorney.
2. Authorized the City Manager to execute an Agreement Amendment with RHAA, in the amount not to exceed \$11,100.00, subject to approval as to form by the City Attorney.

***17. Hillside Water System (Project No. 7083)**

1. Awarded the contract to Blocka Construction, in the amount of \$1,591,883.60.
2. Authorized the City Manager to enter into an agreement with Bay Area Coating in the amount of \$20,000, subject to approval as to form by the City Attorney.
3. Approved budget appropriation of \$850,000 from the Water Fund into the project.

***18.**

Awarded the contract for McCandless Drive box culvert railing repair (Project No. 4182)to

**McCandless Drive
(Project No. 4182)**

Valentine Corporation in the amount of \$34,369.

***19.
Well Upgrade Project
(Project No. 7076)**

Awarded the contract for well upgrade (Project No. 7076) to Zim Industries in the amount of \$373,955.

***20.
Miscellaneous Vendors**

Approved the following purchase request:

\$7,528.87 to Weidner Architectural Signage for the purchase of ongoing signage and free standing agenda boards on an as needed basis for the new City Hall, as requested by the City Hall project team. Weidner Architectural Signage was the only bid received on a quote sent to three suppliers. (Funds are available from the Civic Center Project (Project No. 8026) for this purchase.)

***21.
Payroll Register**

Approved the Payroll Register for the period ending March 3, 2003, in the amount of \$1,564,339.59.

PUBLIC HEARINGS

**1.
Bay Area Water Supply and
Conservation Agency**

Principal Civil Engineer Darryl Wong reported this item was before the Council in conformance with AB 2058, to consider forming and joining the Bay Area Water Supply and Conservation Agency (BAWSCA). Mr. Wong stated the purpose of the Agency was to provide oversight of the San Francisco Public Utilities Commission water system, which provides approximately 60% of water used in Milpitas. Mr. Wong said the proposed Agency would plan and acquire supplemental water projected to be needed in the future, would encourage conservation and recycling, would have authority to plan and finance new facilities for collection and transmission of water, and for the first time, would allow Milpitas to directly participate in key water supply decisions. Mr. Wong explained that there were currently 26 public agencies receiving water from San Francisco; all those agencies would be participating in the new group, which included two investor owned utilities (California Water and Stanford University); and if the resolution was adopted tonight, Milpitas would be appointing a voting representative at the next meeting.

Vice Mayor Dixon inquired if the Council would be given a list of the proposed meeting dates. Mr. Wong responded that the Council would be informed. Councilmember Livengood inquired as to where the meetings would be held. Mr. Wong said he was told the meetings would take place at a centralized location, probably somewhere on the peninsula.

Mayor Esteves opened the public hearing and invited comments.

Rob Means, Milpitas, said he was unclear of how the relationship would be and inquired if the SFPUC was being replaced with the new agency to own and operate the water supply. Mr. Wong responded the water system that provides the transmission to the different water users in the Bay Area was owned by San Francisco, who also controls it; however, as user agencies, we are charged for the operation and repairs of the system and currently that use was approximately 2/3 of the total volume; Milpitas pays, in terms of capital improvements and operational costs, 2/3 of the total costs of the system; Milpitas did not have representation on making decisions on the repair or operation; and this would allow Milpitas, as part of the Agency, to participate in those decisions relative to what funding revenues are provided.

Mr. Means further inquired if Milpitas could expect charges to go up in order to pay for maintenance and improvements now. Mr. Means, quoting a provision in the Water Investment Act of 2002, Section 103j1b, which stated, "a local water project in your city cannot get Federal financing unless the local government *has considered* privatizing your water system," inquired if that particular measure was going to apply to anything the City did in upgrading the Hetch-Hetchy system, and stated he would accept the answer to this last question off line.

Mr. Wong said the system had a "useful life" infrastructure, generally for pipelines, the useful life would range around 50 years; the system requires refurbishing or replacement of selective sections of the pipe to strengthen it; there was a need to address it now and as a consequence, there will be increases in costs.

MOTION to close the public hearing.

M/S: Dixon, Livengood.

Ayes: 5

MOTION to adopt Resolution No. 7291 declaring the finding to form and become a member of the Bay Area Water Supply and Conservation Agency.

M/S: Dixon, Livengood.

Ayes: 5

**2.
Countywide Expressway**

Principal Transportation Planner Joe Oliva reported the comprehensive Countywide Expressway Planning Study was a study that looked upon improvements along expressway systems over the next 20 years; it focused on the Montague Expressway which runs through the City of Milpitas; the Transportation Subcommittee endorsed the study at its meeting of March 27, 2003; Dan Colen from the County Roads and Airports Department would be providing a presentation; and Dawn Cameron and Michael Muerter, also from the County Roads and Airports Department, were in the audience.

Dan Colen presented an overview of the draft implementation plan, stating the purpose of the study was to develop a comprehensive long-term implementation plan; to be comprehensive, the plan had 9 elements which addressed 8 of the County's expressways; there were some projects for capacity and operational improvements which varied from replacement and upgrade of old traffic signal systems to construction of full freeway-like interchanges; implementation of the entire plan recommendations for the capacity and operations element totaled nearly \$2 billion; with the help of the Technical Working Group, a tiered concept had been created where priority was given to the existing Level of Service F intersections; the Tier 1A projects totaled about \$150 million; the Tier 1B projects were also Level of Service F locations but required an interchange; and tier 1C were projected future Level of Service F intersections; Tier 2 and Tier 3 were other capacity projects and major interchange reconstruction-type projects.

Mr. Colen then focused on the Montague Expressway, stating that Milpitas' vision for Montague was a multi-modal/pedestrian friendly arterial roadway; the first phase would be construction of eight lanes from one end of Montague to the other; and to the already recommended grade separation or interchange locations, the interchange at Great Mall/Capitol had been added along with interchange modifications at I-680. Mr. Colen informed the Council that an HOV lane performance evaluation on Montague, particularly between I-880 and I-680, showed that the HOV lanes performed very poorly, did not meet any of the performance criteria, and suffered from operation problems related to lack of access control; the proposal for Montague between I-880 and I-680 was for a six-lane facility that should not have HOV operations; however, at the time the fourth lane in each direction comes on line, it would be operated as an HOV on a trial basis; the HOV lane conversion and the eight-lane widening were in Tier 1A; the Great Mall/Capitol interchange was in Tier 2, and the I-680 interchange modifications were in Tier 3; all Level of Service F locations within the City of Milpitas would be mitigated; with the project improvements, the corridor condition would be improved from projected Level of Service F to Level of Service E; as part of the Tier 1A eight-lane project, sidewalk and bicycle needs could be accommodated as well.

Mr. Colen outlined the costs and the associated shortfalls, which amounted to approximately \$13.4 million annually; the Policy Advisory Board recommended a series of actions: first, that the VTP 20/20 document be revised to increase the allocation from the existing \$80 million identified for the expressways to at least \$150 million to provide for the full Tier 1A, and then an additional funding would be required to go to further project improvements. Mr. Colen

informed the Council that as the VTA worked to develop new funding sources, the County would like to be a partner in the process and have a cost sharing agreement for expressway funding as well; and the entire contents of the plan would be available on the www.expressways.info web site.

Councilmember Livengood, addressing HOV violations, particularly east of I-880, inquired if the CHP was doing the enforcement. Mr. Colen confirmed that the CHP did the HOV enforcement. Councilmember Livengood further inquired if the County had an agreement with the CHP. Mr. Colen stated there was an enforcement agreement that allowed the CHP to provide officers to patrol the HOV lanes on Expressways at no cost to the County as long as the fines and forfeitures generated covered the cost of the CHP enforcement. Councilmember Livengood expressed concern for a 68% violation factor, said he was reluctant to take HOV lanes out, but if they're not working or not being enforced, it didn't make any sense to have them and maybe they should be removed until such a time as the fourth lane is added in each direction. Councilmember Livengood said he assumed when the recommendation was made to remove the HOV lane, those kinds of figures played somewhat of a role in the recommendation. Mr. Colen responded the recommendation was based on four criteria: 1) violation rate; 2) number of cars; 3) number of people; and 4) travel time.

Councilmember Gomez, addressing the goal of turning the Montague Expressway into a pedestrian friendly arterial with sidewalks and bike lanes, inquired what the plan was. Mr. Colen responded that providing continuous sidewalks was recognized as a goal consistent with what Milpitas would like to see; the County was committed to bicycle accommodations on all the Expressways with the preference that bicycle users be adult, experienced bicyclists; the County had a concept called "delineate, but not designate" which says the striping and special characteristics would be provided as if it was a bike lane, however, no sign designating it as a bike lane would be placed to avoid any confusion about whether that's a safe facility for inexperienced or younger bicyclists. Councilmember Gomez further inquired about the standard for edge of pavement striping. Mr. Colen said to address the bicycle needs, they developed a bicycle accommodation guideline addressing the width by working through the Bicycle and Pedestrian Advisory Committee and the VTA.

Vice Mayor Dixon, speaking as the Council liaison to the Bicycle Transportation Advisory Committee (BTAC), said that having additional width and proper striping was a trigger point with the Bicycle Master Plan because they would prefer to have those lanes more clearly marked for residents that want to use it as a way to commute to work. Vice Mayor Dixon commented that the report said Montague Expressway was the only expressway that traverses within the City boundary, the distance from I-680 to I-880 was really not that long, and part of the problem was that there are only two main arterials (Calaveras and Montague) so people use Montague as an everyday internal street and it was sometimes quicker to be in the slow lane than in the HOV lane. Vice Mayor Dixon said the recommendation was a compromise to encourage that the HOV lanes not be added until Montague becomes a full eight lanes and to use it as a trial where the County is open for the City and staff to go back at a future date to determine if it really isn't working.

Councilmember Livengood, addressing Mr. Colen's reference to an intersection grade separation, inquired where that separation would be. Mr. Colen responded that he was talking about the elevation of Capitol and Great Mall over Montague, which would accommodate through traffic, and fell into Tier 2.

Councilmember Gomez inquired if the landscaping that had been mentioned referred to the median island landscaping. Mr. Colen responded that it referred to landscaping in its entirety; the concern is with the cost of maintenance over time; in the present funding scenario, landscaping has only been added where cities have taken on the landscape maintenance.

Mayor Esteves inquired if the traffic signal was part of the planning of the study. Mr. Colen said it was and that an entire element of the study was dedicated to traffic operation systems.

Mayor Esteves opened the public hearing and invited comments.

Rob Means asked where the money was coming from and, referring to the 20/25 Traffic Volume Projection, inquired if the availability of oil had been factored into the volume projection. Mr. Colen, addressing the question of the money, said the VTP 20/20 plan considered all of the fund sources anticipated receiving over the next 30 years, which have been allocated out to different categories (freeways, expressways, local streets, and county roads); expressway projects that look relatively certain or well defined would be funded, and Montague was such a project. Mr. Oliva, addressing Mr. Mean's inquiry about factoring in the availability of oil, stated the projection did take into account the latest economic trends, parking costs, and transit costs and everything else.

MOTION to close the public hearing.

M/S: Dixon, Gomez.

Ayes: 5

MOTION to endorse the Comprehensive Countywide Expressway Planning Study to the Santa Clara County Board of Supervisors.

M/S: Polanski, Gomez.

Ayes: 5

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 9:15 p.m.

**RA2.
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

**RA3.
MINUTES**

MOTION to approve the Redevelopment Agency minutes of March 18, 2003, including joint meeting with the City Council, as submitted.

M/S: Livengood, Dixon.

Ayes: 5

**RA4.
AGENDA**

MOTION to approve the agenda as submitted.

M/S: Dixon, Livengood.

Ayes: 5

**RA5.
CIVIC CENTER UPDATE**

Principal Civil Engineer Mark Rogge reported one contract change order in the amount of \$17,500 was before the Council for approval and was for additional office furniture for four offices to address ergonomic issues. Mr. Rogge reviewed the project budget reporting that after this change order, the remaining project contingency would be \$238,438. Mr. Rogge also reviewed the third floor reception area modifications budget of \$45,000 and the budget for the completion of the fourth floor reporting that the Council had previously approved a new appropriation of \$580,000, nothing had been spent yet, and staff was in the process of completing the design work.

MOTION to approve the change order in the amount of \$17,500 and to note receipt and file project closeout progress report.

M/S: Livengood, Dixon.

Ayes: 5

**RA6.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 9:19 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS & BOARDS

3. Tree Planting Program Status Report

Councilmember Polanski asked that this item be placed on the agenda and commented that Ms. Randisi gave a presentation at the Community Advisory Commission meeting and she thought it was important for the Council to see the excellent work that had been done. Maintenance Supervisor Carol Randisi said this was really a success story in which everyone shared; it started with a grant to plant trees but ended up building and creating community and thanked the Council for its individual and collaborative support throughout the process. Ms. Randisi reported the City received grant of \$100,000 to plant 1,200 trees in two years; 500 trees were planted in the first fiscal year and 700 trees planted last year with a 95 percent survival rate at this point in time.

Mayor Esteves congratulated Ms. Randisi and the volunteers for meeting the goal commenting that he personally witnessed many of the volunteers working. Mayor Esteves inquired about future programs. Ms. Randisi responded a status quo budget was being proposed for next year to keep the same level of service but cutting back on the number of trees planted. Mayor Esteves said he would like to continue with tree planting every year, commented on the tree-planting program in Stockton, and suggesting getting information on the Stockton program. Mayor Esteves also said he believed this should be a continuous event to continue improving the greening of Milpitas. Ms. Randisi commented that staff planned to go back to what was being done prior to the grant – planting 250-500 trees, there would be some money in the budget but not for planting 1,200 trees like last year.

Mayor Esteves asked if staff was continuing to seek grants. Ms. Randisi responded there were grants available but staff needed to find appropriate planting sites and was limited by the available planting sites. Mayor Esteves said he wanted to promote this, he thought funding was an issue and was looking for a way to fund it, San Jose has a requirement when property sells that a tree be planted, and suggested looking at a \$60 or \$80 tree fee every time there is a real estate transaction.

Councilmember Polanski commented that both the Parks, Recreation, and Cultural Resources Commission and the Community Advisory Commission have trees and tree planting on their work plans and are keeping it as a priority. Councilmember Polanski also commented on a request she received in the mail from Debbie Giordano to plant trees along Country Club Drive and asked if Ms. Randisi could respond. Mr. Randisi explained Country Club Drive would be a good place to plant trees but there were several challenges and constraints and went on to describe the issues that fell into the area of a capital project.

Councilmember Polanski expressed appreciation to Ms. Randisi and staff and the volunteers that assisted in the tree-planting program.

MOTION to note receipt and file.

M/S: Polanski, Livengood.

Ayes: 5

NEW BUSINESS

4. Campaign Contribution Ordinance Review

City Attorney Steve Mattas reported that at the request of Mayor Esteves, the City Attorney's Office reviewed the City's campaign contribution ordinance in the context of existing State and Federal case law, statutes, and regulations and concluded that State law might preempt some aspects of the campaign ordinance. Mr. Mattas noted there wasn't an action item before the Council this evening because he first wanted to solicit direction from the Council and if the Council desired to modify the ordinance, the modifications would be brought back at another time. Mr. Mattas reviewed the three major points of the ordinance reporting that the current ordinance has a campaign contribution limit of \$350 per election cycle, which was a valid restriction and he was not recommending any change to that unless the Council desired a change. Mr. Mattas further reported the two other forms of limitations present in the ordinance were a prohibition on transferring funds between committees for other elective

offices and a requirement that excess campaign funds be disposed of within 90 days following an election. Mr. Mattas explained that with respect to the prohibition on transferring funds from one election cycle to another, the Attorney General has, based on U.S. Supreme Court law and 9th Circuit Law, offered the opinion that a prohibition on the transfer of funds intra as opposed to inter candidate could be construed as a form of expenditure restriction, and the U.S. Supreme Court has found that to be unconstitutional and the Council may want to provide some direction in regard to that limitation on transfer. Mr. Mattas pointed out that inter-candidate limitations are constitutional when they operate like contribution limits; if it is lawful to say you can only give \$350 during a campaign cycle, then you can say you can't transfer more than \$350 from one candidate to another. Mr. Mattas further explained the issues with respect to the requirement that leftover funds be dispersed within 90 days reporting that the Council had been provided with an opinion indicating that in general that type of limitation might be lawful under the State law that allows cities to implement more restrictive laws but the actual application in Milpitas may be more restrictive than what State law allows and described three specific examples of this. Mr. Mattas said he believed the Council did have some level of authority to place a time limit on disposing of funds and a limit on the types of recipients of those funds but it needed to be consistent with State law and not more restrictive. Mr. Mattas further stated there were some policy decisions the Council needed to consider such as the \$350 contribution limit, which the Council may wish to retain, and to provide direction as to whether or not the Council wants staff to come back with an ordinance that does away with the prohibition of intra-candidate transfer of funds and let the State law regulate that issue and provide direction as to whether or not the Council wants to maintain some level or requirement that excess campaign funds be dispersed within a certain time period.

Vice Mayor Dixon said she was more than comfortable staying with the \$350 contribution limit but expressed concern that unless there is an audit by the State, candidates over the years have taken \$1,000 contributions and just recorded it in thirds. Vice Mayor Dixon inquired if it was possible for the Council to impose further guidelines or penalties for those that don't comply like the majority. City Attorney Mattas responded the ability to enforce was really invested in the FPPC as it relates to violations of the Political Reform Act and campaign disclosure laws that exist at the State level. Vice Mayor Dixon commented that the majority of the Council file their statements on time; however, there are those, in particular a former Mayor, who don't, and inquired if there was something that could be put into an ordinance to strongly encourage that the policy be followed - something verbally without any real teeth so there would be equity among all. Mr. Mattas said the Council could express that as a policy preference but he didn't recommend putting it in an ordinance unless it was more in the form of a recital so it wouldn't create the impression of enforceability when it didn't exist. Vice Mayor Dixon said hardly anything was enforceable in this ordinance and that was the core of the problem. Mr. Mattas said the \$350 was enforceable. Vice Mayor Dixon responded only if there is an audit, otherwise nobody knows because there really was no mechanism to bring real teeth to this ordinance but that just may be her perception.

Councilmember Polanski agreed with Vice Mayor Dixon's comments, agreed with the maximum contribution of \$350, and felt that if the ordinance needed to be changed to meet State requirements, then the Council should move forward. Councilmember Polanski said she also thought that the transfer of funds should be with the \$350 limit, the section dealing with funds not expended within 90 days applied to both successful and unsuccessful candidates, and asked what were the penalties. Mr. Mattas responded a violation was potentially a violation of the Municipal Code but there was some discretion in how that gets enforced or whether it gets enforced; if the Council desired to keep that as solid timeline, then the Council would have an interest in having it enforced at a minimum by having people notified and could direct further enforcement, if it wanted.

Councilmember Polanski suggested days be added to do that because when giving funds to a non-profit group, the non-profit groups don't always deposit the funds in a timely manner and the check doesn't always clear right way, and she didn't believe many candidates immediately

try to get everything squared away right after the election. Mr. Mattas said if the Council wanted to extend the time period, it could.

Mayor Esteves commented that he had requested the ordinance be discussed, he agreed with the \$350 contribution limit but felt other parts of the ordinance were more restrictive than State law, and felt the ordinance should be amended to make it at par with State and Constitutional law. Mayor Esteves said he would also like the ordinance to be similar to ordinances in other cities with the ability to transfer funds and roll over funds but at the same time he agreed with restricting it to \$350.

Councilmember Livengood commented that from his perspective, if there are areas where the ordinance is in conflict with State law, it should be fixed; his biggest concern, and one of the reasons why the prohibition against carrying funds forward was in the ordinance, was the issue of somebody raising money for one race and turning around and using it for a different one. Councilmember Livengood expressed concern about candidates having the ability to amass a huge war chest, which mostly only incumbents can do, and holding those funds for two or four years but he was hearing the City Attorney say it was a constitutional thing you should be able to do. Mr. Mattas said yes, the Attorney General has said a ban on that type of activity operates as an expenditure limitation. Councilmember Livengood said it disturbed him that someone could raise money for one office and then shift gears and run for something else; however, if that was what the Attorney General was saying, he was inclined to go along with bringing the ordinance in concert with State law.

Mayor Esteves said his major concern was State law and the Attorney General's opinion and thought the Council should start considering this.

MOTION to direct staff to come back with any changes to the ordinance that would bring the ordinance into compliance with current case law, the Ninth Circuit Court, and the Attorney General, and any element of the ordinance that doesn't meet State law, for the Council's review and consideration.

M/S: Livengood, Dixon.

Councilmember Gomez asked what if a candidate accepted \$350 for one campaign and decided to run for another office – can the candidate accept another \$350 for the other office? City Attorney Mattas clarified the \$350 limit was per election. Mr. Mattas commented that if the Council wanted to be presented with the possible changes that would bring the ordinance into compliance with State law, the Council could then look at it and decide which ones they wanted to adopt. Mr. Mattas said that as a whole, it appeared the Council was comfortable with maintaining the \$350 limit. Councilmember Gomez said he was comfortable with it.

VOTE ON MOTION:

Ayes: 5

5.
Designation as
Passport Acceptance
Facility

City Clerk Gail Blalock reported before the Council was a proposal to designate Milpitas City Hall as a Passport Acceptance Facility. Ms. Blalock said the two reasons for making this proposal were that it will offer a new service to the Milpitas Community at City hall and will enable Milpitas residents and the surrounding community to apply for a passport much closer to home, and it will provide a new revenue source for the City from monies that would be spent anyway but at another location. Ms. Blalock further stated she believed this new service could be provided by the existing City Clerk's staff and the only cost she was aware of would be the daily postage to send out the applications to the State Department and any advertising the City may want to do to notify the community of this service.

Vice Mayor Dixon asked if a marriage license was available at City Hall because that was one of the most asked questions she receives. Ms. Blalock responded that was also the number one question the Clerk's Office received and the answer was no, marriage licenses were issued by the County. Vice Mayor Dixon said she thought it was about time passports were available at City Hall and she was fully supportive.

Councilmember Gomez said he thought it was a great program and asked how long it would take staff to process an application so that he would feel a little more comfortable that it won't be a burden on staff. Ms. Blalock responded the State Passport Agency estimated 5-7 minutes per application and a survey of city clerks who do this say it averages 5-10 minutes per application. Ms. Blalock said she thought this was doable, an advantage was that we can set our hours and cities she had talked to didn't think it was a burden.

Councilmember Polanski said she thought this was exciting, was pleased this service would be provided in Milpitas and wanted to thank the Clerk's staff for finding a new revenue source, even if it was small, and she was ready to make a motion to approve.

Mayor Esteves said he wanted to be clear this was just application processing and the City would have nothing to do with authenticating or the approval process. Ms. Blalock responded staff would make sure the application was complete and all the required forms were submitted, would administer the Oath, and all the documents would be sent on to the State Department for approval. Mayor Esteves asked if the service would be provided 12:00-1:00 p.m. (during the noon hour). Ms. Blalock responded yes, the Clerk's Office is always open during the lunch hour.

MOTION to approve Milpitas City Hall being designated a Passport Acceptance Facility.

M/S: Polanski, Livengood.

Ayes: 5

6.
Cancel Council
Meeting in July

Councilmember Polanski removed this item from the Consent Calendar and commented that she had been working with the Community Advisory Commission in developing the City Calendar for 2004 that will be going to print this fall and inquired if the Council had ever thought about canceling the July meeting a year in advance so it would not appear on the City Calendar. Councilmember Polanski further commented that most of the City's commissions begin their meetings at 7:00 p.m., she had heard from several residents that 7:00 p.m. was a more convenient time, several years ago Council meetings began at 7:00 p.m., and suggested that the Council might want to consider changing its meeting start time from 7:30 p.m. to 7:00 p.m.

Mayor Esteves said changing the starting time for Council meetings would impact the Civic Center Subcommittee, which meets at 5:30 p.m., and the Subcommittee would have to move to another day. Vice Mayor Dixon said she wouldn't argue against it because it makes a long evening for her with the Subcommittee meeting at 5:30 p.m. and the Council Closed Session at 6:30 p.m., and she didn't have a problem changing the day for the Subcommittee meeting.

City Attorney Mattas advised Councilmembers that if they desired to have a discussion about a meeting time change, staff should be directed to place the discussion on a future Council agenda; the Council could vote on canceling the July meeting for this year but should direct that consideration of canceling a meeting next July should also be placed on a future agenda.

Vice Mayor Dixon said she would be in favor of that. Mayor Esteves clarified that for a future agenda, staff would bring back consideration of changing the starting time for Council meetings and canceling one meeting in July next year (2004).

MOTION to cancel the July 15, 2003, City Council meeting and direct staff to prepare the appropriate notifications.

M/S: Polanski, Dixon.

Ayes: 5

ORDINANCES

9.
Ord. No. 133.6

Assistant City Manager Blair King reported the lease between the City and County for the Dog Park requires that the City operate the facility in accordance with rules adopted for the

Dog Park Rules
(Introduce)

Dog Park; the ordinance before the Council was developed upon review of Dog Parks in the region and was reviewed by the Dog Park users group, Santa Clara County Parks staff, the City's Recreation Division and Police Department; and on November 4, 2002, the Parks, Recreation, and Cultural Resources Commission recommended that the rules be forwarded to the Council for adoption.

Councilmember Polanski commented that the proposal contained 13 rules and some people might be superstitious about having 13. Assistant City Manager King suggested that item 10, the reference that all other City park rules apply to use of the Dog Park, could be deleted. Councilmember Polanski suggested that the first rule be broken into two rules, making a total of 14 regulations. Councilmember Livengood said he wanted to keep item 10.

Assistant City Manager King read the title of Ordinance No. 133.6 adding Section 7.01 to Chapter 9, Title V, of the Milpitas Municipal Code related to regulations for use of the City Dog Park located at Ed Levin Park.

MOTION to waive the reading beyond the title.

M/S: Livengood, Dixon.

Ayes: 5

MOTION to introduce Ordinance No. 133.6 as modified by the Council to separate item 1 into two regulations resulting in a total of 14 regulations.

M/S: Livengood, Dixon.

Ayes: 5

BIDS & CONTRACTS

12.
Consultant Agreement
Library Building Program

Principal Analyst Cindy Maxwell said she had a PowerPoint presentation but since the Council heard the presentation at the last meeting, she could just answer questions. Vice Mayor Dixon inquired if the visioning studies was when community input would be received or was this not looking at community input. Ms. Maxwell responded an extensive process was gone through last year to gather community input through a lot of different ways to develop a needs assessment and that would be used to develop the building program. Vice Mayor Dixon called attention to the Work Scope, page 1 of 1, item 1.5, and asked where the reference to a 500-seat performance space came from and if this group was going to be looking at both buildings or just the library. Ms. Maxwell said that was included in the Community Center portion and was optional; it was not part of the contract but was identified in case there was a decision somewhere along the lines that the Community Center may need to have some planning done for as what we would like to see in the future; the performing space was based on the feasibility study done a few years ago and was optional and could be removed. Mayor Esteves said he recalled that the Library Subcommittee had taken that out. Ms. Maxwell said it would be removed.

Mayor Esteves inquired where the penalty clause was. Ms. Maxwell responded a project schedule would be developed and would include milestones, deliverables, and project deadlines and would be reviewed by the Library Subcommittee; the deliverables were also outlined in the scope of services, there was the 10 percent retention, and there was also the ability to terminate the agreement for non-performance. Mayor Esteves said he wanted to know what the penalty was. Ms. Maxwell said it had been discussed with the consultant and legal staff and it became a very difficult point. City Manager Wilson clarified that in effect, it would be the retention and by refusing to pay it, that would be the penalty.

Councilmember Livengood commented that the issue of the community center was, at this point, one he didn't want to get into.

MOTION to authorize the City Manager to execute an agreement for the Civic Center site planning and preparation of a Building Program for the Library Building Project with

RipleyScoggin, in an amount not to exceed \$207,800, subject to approval as to form by the City Attorney.

M/S: Livengood, Dixon.

Ayes: 5

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 10:32 p.m.

Gail Blalock, CMC
City Clerk